

SENATE BILL NO. 1449

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Locke)

A BILL to amend the Code of Virginia by adding in Title 55 a chapter numbered 14.1, consisting of sections numbered 55-252.1 through 55-252.4, relating to the Residential Executory Real Estate Contracts Act.

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 55 a chapter numbered 14.1, consisting of sections numbered 55-252.1 through 55-252.4, as follows:**

CHAPTER 14.1.

RESIDENTIAL EXECUTORY REAL ESTATE CONTRACTS ACT.

**§ 55-252.1. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice in the form of a certificate of service confirming such mailing or hand delivery prepared by the sender.

"Option payment" means the amount paid by the purchaser in a residential executory real estate contract in exchange for the right to purchase the property that is the subject of such contract at a specific price within a specified time.

"Purchaser" means a person who enters into a residential executory real estate contract.

"Residential executory real estate contract" means an installment land contract, lease option contract, or rent-to-own contract by which a purchaser acquires any right or interest in real property other than a right of first refusal and occupies or intends to occupy the property as his primary residence.

"Vendor" means the person who sells, or proposes to sell, real property under a residential executory real estate contract.

**§ 55-252.2. Exemptions.**

A. The provisions of this chapter shall not apply to residential executory real estate contracts where the vendor is:

1. A natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in the Commonwealth unless the person or entity is an agent, affiliate, subsidiary, or parent company to another legal entity that owns at least one additional residential dwelling unit in the Commonwealth;

2. A real estate licensee pursuant to Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; or

3. A bank, savings institution, credit union, or mortgage lender licensed under Title 6.2.

**§ 55-252.3. Provisions applicable to residential executory real estate contracts.**

A. Notwithstanding any other provision of law, a residential executory real estate contract shall be subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.).

B. Notwithstanding any other provision of law, the following provisions shall be applicable to every residential executory real estate contract:

1. The purchaser shall have the right to exercise the option to purchase the property at any time before the option expires, and no fee or penalty shall be charged to any purchaser who exercises the option at an earlier time than anticipated under the contract.

2. If the purchaser defaults in the payment of rent or other requirements under a lease, the vendor may serve notice of such default. If default is limited solely to failure to pay rent or other monetary charges, the vendor may terminate the lease and recover possession of the premises only if the delinquent obligation remains outstanding more than 30 days after notice is served upon the purchaser notifying him of (i) the nonpayment, (ii) the amount of the delinquency, and (iii) the vendor's intention to terminate the lease if the default is not timely cured.

3. The vendor may not forfeit the option payment or any portion of such payment, provided, however, that the vendor may apply the option payment (i) to any amounts owed by such purchaser under

the residential executory real estate contract or (ii) as otherwise directed by court order in an interpleader action filed by such vendor pursuant to § 8.01-364 in a court of competent jurisdiction.

4. If the vendor defaults, the purchaser shall be entitled to bring an action in a court of competent jurisdiction (i) to enjoin further violations; (ii) to recover the purchaser's actual damages; (iii) for specific performance of the contract; (iv) for rescission; or (v) to receive other equitable relief as the court may find appropriate in the interests of justice.

5. The prevailing party in any proceeding under this chapter in a court of competent jurisdiction may be awarded reasonable attorney fees and costs.

C. A residential executory real estate contract may be recorded among the land records in the office of the clerk of the circuit court where the real property is located.

D. The provisions contained in this section shall not be waived by contract.

**§ 55-252.4. Board for Housing and Community Development; development of best practice provisions for residential executory real estate contracts.**

The Board for Housing and Community Development shall develop and make available on its website best practice provisions for residential executory real estate contracts. Such best practice provisions shall include (i) the full names and current mailing addresses of all parties to the contract; (ii) a legal description of the subject premises; (iii) the term of the contract or rental agreement and the amount of periodic payments or rent due; (iv) the most recent assessment of the value of the subject premises by the relevant property tax assessor, as well as the amount of property tax assigned to the property in the year preceding the transaction; (v) a statement disclosing any liens or encumbrances against the subject premises; (vi) the contract sales price for the subject premises, which shall be stated as a precise fixed amount in United States dollars; (vii) a description and the amount of any charges or fees for services that are includable in the contract separate from the contract sales price; (viii) the amount of any option payment and the deadline by which such option payment is required to be paid; (ix) the residual amount of the contract sales price that is required to be paid after the option payment has been made; (x) the total amount that the purchaser is required to pay in order to complete the purchase of the property under the terms of the contract, including the combined amount of the option, contract sales price, and rent payments

80 coming due over the term of the contract; (xi) the amount that may be paid to extend the option, if any,  
81 and the duration of any such extension; and (xii) the notarized signature of each party and date of each  
82 signature.

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